

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

CASSANDRA SIMON, SYDNEY )  
TESTMAN, MIGUEL LUNA, )  
ISABELLA CAMPOS, DANA )  
PATTON, RICHARD FORDING, and )  
THE ALABAMA STATE )  
CONFERENCE OF THE NAACP, )

*Plaintiffs,* )

v. )

No. 2:25-cv-00067-MHH

KAY IVEY, in her official capacity as )  
Governor of Alabama and President Ex- )  
Officio of the University of Alabama )  
Board of Trustees; SCOTT PHELPS, in )  
his official capacity as President Pro )  
Tempore of the University of Alabama )  
Board of Trustees; and MIKE BROCK, )  
KAREN BROOKS, MYLA E. )  
CALHOUN, RONALD GRAY, JEFF )  
GRONBERG, O.B. GRAYSON HALL, )  
JR., BARBARA HUMPHREY, W. )  
DAVIS MALONE III, EVELYN )  
VANSANT MAULDIN, HARRIS )  
MORRISSETTE, J. STEVEN ROY, )  
KENNETH SIMON, MARIETTA )  
URQUHART, AND KENNETH )  
VANDERVOORT, in their official )  
capacities as members of the University )  
of Alabama Board of Trustees, )

*Defendants.* )

**MOTION TO DISMISS BY DEFENDANT KAY IVEY IN HER OFFICIAL  
CAPACITY AS GOVERNOR OF ALABAMA**

Defendant Kay Ivey, in her official capacity as Governor of Alabama, moves the Court to dismiss all claims asserted against her. Because Plaintiffs have neither established standing to sue Governor Ivey nor alleged facts sufficient to abrogate her sovereign immunity, all claims against Governor Ivey in her capacity as Governor should be dismissed for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

Alternatively, even if Plaintiffs could establish this Court's jurisdiction over Governor Ivey, Rule 12(b)(6) dismissal would be warranted because Plaintiffs fail to state a claim upon which relief can be granted.

Plaintiffs' First Amendment claims in Counts One and Two fail because they challenge the government's regulation of its own speech and are thus barred by the Supreme Court's decision in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), and the Eleventh Circuit's decision in *Bishop v. Aronov*, 926 F.2d 1066 (11th Cir. 1991), among others. Neither public university professors nor public university students have a First Amendment right to override the State's curricular choices and to, in the words of the statute they challenge, "[d]irect," "compel," and "require[]" students to "assent to" the noxious concept "[t]hat the moral character of an individual is determined by his or her race, color, religion, sex, ethnicity, or national origin."

Counts Three and Four should be dismissed because students and student organizations at public universities do not have a constitutional right to preferential

treatment based on race or viewpoint, either through direct funding from the university or designated office space. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230-31 (2023); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995).

Count Five should be dismissed because the Act is not unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment. Though Plaintiffs may not like its terms, the Act is readily understood; and if there were doubt on that score, the Act is readily susceptible to a saving construction, as its terms require.

Last, Count Six should be dismissed because Plaintiffs have not alleged facts that, if true, would show intentional discrimination by the Alabama Legislature in enacting the Act in 2024.

In addition to the attached memorandum in support of this motion, Governor Ivey adopts and incorporates the arguments and authorities from the Board Defendants' memorandum in support of dismissal.

For these reasons, Governor Ivey respectfully requests that all claims asserted against her in her official capacity as Governor be dismissed.

Date: March 25, 2025

Respectfully submitted,

Steve Marshall  
*Attorney General*

James W. Davis (ASB-4063-I58J)  
*Deputy Attorney General*

s/ A. Barrett Bowdre  
A. Barrett Bowdre (ASB-2087-K29V)  
*Principal Deputy Solicitor General*

George Muirhead (ASB-7345-K00L)  
*Assistant Solicitor General*

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*Counsel for Defendant Kay Ivey in her  
official capacity as Governor of Alabama*

### **CERTIFICATE OF SERVICE**

I certify that I electronically filed this document using the Court's CM/ECF system on March 25, 2025, which will serve all counsel of record.

s/ A. Barrett Bowdre

A. Barrett Bowdre

*Counsel for Defendant Kay Ivey in her  
official capacity as Governor of Alabama*